

86th Legislative Session – 2011

Committee: Joint Appropriations

Wednesday, February 02, 2011

P - Present
E - Excused
A - Absent

Roll Call

P Sutton
P Haverly
P Heineman
P Novstrup (Al)
P Peters
P Putnam
P Rampelberg
P Dennert
P Wismer
P Juhnke
P Bolin
P Romkema
P Dryden
P White
P Tidemann
P Carson
P Brown, Vice-Chair
P Wink, Chair

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Chairman Dean Wink.

Unified Judicial System

Chief Justice David Gilbertson introduced the staff present at the meeting – **Ms. Patricia Duggan**, State Court Administrator, and **Ms. Janet Borchard**, Director of Budget and Finance. Distributed was a PowerPoint presentation outlining the Unified Judicial System's (UJS)

FY2012 budget request (**Document #1**) and a chart entitled “Court Automation Fund: Fiscal Year 2010” (**Document #2**).

Chief Justice Gilbertson stated that a major emphasis of the UJS is pursuing alternative programs to sentencing cases. In the last fiscal year, there were 915 people on probation, and the majority were adult felons. It costs the state \$2.90 per day to have person on probation, and \$63.69 per day for incarceration. A statewide study shows a 93% success rate of the people on probation either remain in the program or successfully complete the program.

For FY2012, the Governor recommends a budget of \$41,253,355; comprised of \$31,753,092 in general funds, \$393,539 in federal fund expenditure authority, and \$9,106,724 in other fund expenditure authority, and 527.4 FTEs. This is a decrease of \$3,528,121 in general funds (10.0%) and \$221,909 in other fund expenditure authority (2.4%).

Chief Justice Gilbertson stated that the UJS budget is about \$35 million because the UJS does not own the courthouses. Approximately 85% of the budget is for personnel (judges, court services officers, administrative personnel, and clerks of courts). The original budget request was approximately a \$1 million budget cut (3.5%). After discussion with Governor Daugaard, Chief Justice Gilbertson talked to the other justices and identified additional budget cuts that would reduce the general fund appropriation by 5% for FY2012. Chief Justice Gilbertson stated his concern that if the general fund appropriation is reduced by more than 5%, the UJS will need to look at significant layoffs. The UJS has developed a budget proposal for FY2012 that will increase the budget reduction from 5% to the requested 10% for one year. This budget reduction does allow the UJS to maintain the viability of the system without layoffs of court services officers and maintain the UJS presence in the court houses. However, the UJS will be utilizing funds that will not be replaced, and therefore the UJS may need to increase user fees next year.

The state pays for judges and employees’ salaries and benefits, training and education, operating expenses, travel, contractual services, supplies and materials, capital assets, and automation/technology. All other expenses are incurred by the counties.

Ms. Duggan stated that the UJS budget comprises 3% of the total state general fund budget. The UJS is funded primarily with general funds with 77.5% of the UJS budget coming from the general fund. The rest of the budget is comprised of 21.6% other funds and 0.9% federal funds.

For FY2012, the funds will be distributed as follows – circuit courts 35.4%, clerks of court 26.4%, court services 23%, supreme court 7.0%, state court administrator 4.7%, community bases services 1.9%, information and technology 1.6%, and judicial quality communication 0.1%.

Ms. Duggan commented that although the total case filings for the UJS are down, some of the case types have increased and therefore the UJS work on case loads is still high. Filings are not the only indicator of a workload. Some of the other criteria include population, jury time, travel time, aggressiveness of the local attorney, and if the person is represented by an attorney.

Ms. Duggan stated that slide 8 of Document #1 shows the amount the UJS collected last year in addition to filing fees. The UJS collected \$39,188,686 in 2010. The 2010 revenues were distributed to the following areas:

- \$9,915,984 for schools;
- \$4,334,247 for technology;
- \$3,687,920 to victims;
- \$2,726,432 for counties;
- \$667,640 to municipalities;
- \$413,435 to state funds;
- \$349,643 for child advocates, and
- \$70,703 for local domestic abuse programs.

Representative H. Paul Dennert asked if the UJS is unable to collect on some receipts. Ms. Duggan responded that there are uncollected fines, fees, and costs which varies daily. When a person has not made payments, the account is considered a doubtful account. When a payment is made, the account is brought back into the system.

Ms. Duggan commented that in FY2012, the UJS will continue to perform annual reviews of the court system programs to see if there are trends in the state, region, and across the country. The UJS will also work to balance emerging needs with local needs and available resources. Aspects of the UJS that will change in FY2012 are dependent on the amount of revenue entering the system and the issues arising. The UJS is not able to control the number of cases that enter the system.

In the past year, the UJS has made changes to make more efficiencies. Some of the efficiencies include:

- Making better use of interactive television components;
- Developing a national directory of other courts using the interactive television;
- Reducing travel for the Supreme Court by eliminating one hearing at a location outside of Pierre;
- Placing the annual report information on the UJS website to reduce publishing costs; and
- Establishing a computer and other hardware five-year replacement schedule.

Ms. Duggan commented that the UJS could review how the UJS provides services to try and find efficiencies. For FY2012, the UJS will not initiate new activities unless additional funding is appropriated.

Senator Phyllis Heineman asked out the limitations on using the interactive television. Chief Justice Gilbertson said that there are constitutional and statutory restrictions on using technology. One example is that a person has the right to face their accuser, therefore the court hearing cannot be held over the interactive television unless both parties agree.

Ms. Borchard stated that the budget request for FY2012 is outlined on slide 9 of Document #1. She explained the original 5% UJS budget reductions, which include:

- \$228,985 in capital assets;
- \$919,175 in specific programs;
- \$9,701 for BOA service cuts;
- \$41,292 for provider rate cuts;
- \$340,241 for operating expenses; and
- \$225,892 for personal services.

Senator J.E. “Jim” Putnam asked if the budget cuts will impact the counties. Ms. Borchard stated that the funding for the country security project grants has been reduced from \$50,000 to \$10,000 in the last two fiscal years. This would be an additional reduction to the program. Counties may see a limit on what is available, but this is also dependent on the requests the UJS receives from the counties.

Senator Jeffrey Haverly asked about the possibility of eliminating court reporting and using a digital system. Chief Justice Gilbertson responded that the UJS looked at the using the digital system, but the technology available is not an acceptable alternative to court reporters, especially for high profile cases. Also, it is not cost effective to set up a digital system in all counties. Ms. Duggan commented that the magistrate courts use the digital recording system, because the UJS is not able to have a court reporter assigned to every judge.

Representative Susan Wismer asked about the implementation of the budget cut to Community Based Services. Ms. Duggan responded that the requested cut is a base cut and a provider rate cut in addition. The Community Based Services are last resort funds. If a defendant or the person’s family is not able to pay for the services, the UJS looks for insurances and other sources of funding before using the Community Based Services funds. Because the amount of funding will be reduced in FY2012, the UJS will not be able to have as much of this service available.

Senator Haverly asked if there are any areas to reduce the number of judges because of lower caseloads. Chief Justice Gilbertson said that the UJS has reduced the number of judges in the

past. In addition to caseloads, the UJS looks at travel time the amount of time needed for each case to determine the number of judges. This review is not done annually, but on a regular basis.

Ms. Borchard stated the UJS is able to meet the Governor requested 10% budget reduction by using the 5% agency requested budget cuts and by moving \$1,762,835 of the remaining general fund expenditures to the Court Automation Fund. An amendment to the general bill will be needed to increase the UJS authority for the Court Automation Fund.

Senator Corey Brown requested that the UJS provide a detailed list of the expenses that will be utilizing the funds from the Court Automation Fund.

In response to Representative Wismer's question, **Ms. Nancy Eller**, Director of Child Court Services, said that the UJS currently supervises over 5,000 felony offenders in a fiscal year. The Community Based Services help to keep defendants away from the penitentiary at a cost of \$64 per day and keep them in probation at a cost of \$2.90 per day. With the reduction in the Community Based Services' budget, not as many people will receive those services next year. Chief Justice Gilbertson commented that for the UJS to reach 10% reduction, a reduction in the Community Based Services program or the elimination of court services officers was needed.

Senator Deb Peters asked about a decrease in projections compared to actual expenditures for the Court Automation Fund shown on Document #2. Ms. Borchard responded that the difference is the decrease in case management system cost was because the UJS was not paying expenses from the Court Automation Fund at the beginning of the project. The UJS paid the expenses with general funds. The contractual services difference is due to the information and technology contractors. Each year the UJS contracts with a certain number of contractors and if funding is available, the UJS tries to carry them over from year to year. The difference is due to the fact that the UJS carried the contractors over from the previous year and the expenses would not be shown this year.

Representative Dennert asked about the sustainability of shifting the expenses to the Court Automation Fund. Ms. Duggan stated that if the current revenues and expenses remain constant, the UJS will need additional funding in two years. The UJS is working on a plan to address the situation next year, to not have a regressive impact on the fund.

Representative Wismer asked for an update on the new case management system that was installed last year. Ms. Duggan replied that the UJS has moved from the gap/fit analysis into the preproduction and development phase. The program needed to be tailored to fit the UJS laws and business rules in the state. There should be a pilot system initiated this summer. The UJS needs to determine if the system will be implemented in 4-8 stages. The entire state will be switched to the new program within three years and e-filing will occur a year after.

Department of Health

Secretary Doneen Hollingsworth along with Joan Adam, Colleen Winter, Tom Martinec, Natalie Berquist and Kari Weisbeck met with the Appropriations Committee to discuss the department's FY12 budget request. Document No. 3 was distributed.

The department receives 0.6% of general funds amounting to \$6,979,125 or 8% of the department budget along with \$42,700,633 or 52% federal funds and \$32,919,643 or 40% other funds for a total budget request of \$82,599,401 a reduction of \$2,064,626 or 2.4% from the FY11 budget request. The department did reduce general fund expenditures by 10.3%.

Representative Wink asked for budget information on the Community Health Nurse program. Secretary Hollingsworth said the county contributes approximately \$10,000 and often provides free office space. The nurse(s) delivers WIC services as well as any other public health services.

Secretary Hollingsworth said through the budget exercise, the department has worked very hard to minimize the impact to public health with the budget cuts to the department. As a result of the 10% budget cuts, the department will no longer provide the following:

- Latent tuberculosis (TB) reporting and follow-up for low-risk patients; (\$117,038), (1.0) FTE
- Lab testing for mycology and non-TB mycobacteria; (\$60,000)
- FTE reduction in HSDR Administration; (\$20,243) general, (\$20,243) federal, (1.0) FTE
- FTE reduction in Board of Medical and Osteopathic Examiners; (\$92,000) other, (2.0) FTE
- Universal influenza vaccine for children ages 6 years-18 years; (\$349,000)

Secretary Hollingsworth said because the vaccine has to be ordered in advance, the elimination of the flu shots will take effect in 2013. The department will continue to provide vaccine for children 6 months through 5 years and, with the help of federal funds, free vaccine will be available for approximately half of the children ages 6 through 18. Representative Dennert asked if there was a shelf-life for the flu vaccine. Secretary Hollingsworth said yes, a new vaccine is developed every year based on what is happening in the southern hemisphere in the summer and the strains of influenza that are prevalent. Representative White asked if the \$349,000 was really being eliminated or was it moving to another account. Secretary Hollingsworth said it will no longer be part of the department's base budget.

Data regarding hospital discharges by age for influenza and pneumonia was provided which shows the youngest and oldest citizens are affected the most by influenza. Nationally, South

Dakota has the highest number of children and elderly receiving flu vaccinations. In 2006, prior to South Dakota's initiative, 44% of the children in South Dakota received flu vaccinations; and in 2010, the 3rd year of the initiative, 87% of that same age group was immunized.

Secretary Hollingsworth reminded the Committee that the tobacco program was reduced by \$1,500,000 in FY11. As a result the department has stopped doing the following tobacco activities:

- A \$100,000 reduction in Counter-Marketing
- A \$1,000,000 reduction in Schools/Communities/Outreach
 - Funding community-based prevention in 85 schools and 15 community coalitions;
- A \$400,000 reduction in Cessation
 - The department will provide QuitLine cessation drugs for 8 weeks rather than 12 weeks.

Secretary Hollingsworth said last fiscal year the department had higher than normal amounts of federal tobacco grant dollars because of ARRA funding; however, that funding has gone away. Senator Brown asked what results the department had seen in the tobacco program, as a result of this increased funding. Secretary Hollingsworth said the increased funding was significant to the program and sustained funding in this area does make a difference. Last year South Dakota's adult smoking rate was 17.5%, the lowest it had ever been and is lower than any of the surrounding states. The QuitLine has done a good job of helping adults quit smoking. The QuitLine offers free cessation counseling (run by Avera) and medications (prescription or over-the-counter). The quit rate for participants in the QuitLine is 43% and is a result of a combination of medications and counseling. Secretary Hollingsworth said the success rate for individuals quitting on their own is approximately 5%, and a successful quit comes after 13 months.

The department will change the following items in FY12:

- Tobacco control plans - \$500,000
 - Target prevention programming towards disparate populations of:
 - Youth
 - Young Adults (18-24 years of age) have a tobacco use rate of 27%
 - Pregnant Women have a tobacco use rate of 18.3%
 - American Indians have a tobacco use rate of 48%
 - Target tobacco cessation efforts to reach disparate populations

Representative Wink asked about the proposed reduction in cessation drugs from 12 to 8 weeks. Ms. Winter said because many of the cessation products recommend use for longer than 8 weeks, the department is working with partners to help individuals receive the drugs at a lower rate for the remaining time necessary.

Senator Putnam commented on the successful campaign conducted by the department and asked where the \$500,000 will be used in the future. Ms. Winter said the department will repeat their message and are looking at expanding their message at the community school based level. The department currently has 8 combined community school grants that will be used to train students, school personnel and other community providers. The department will also work with youth who are in the corrections system or those who have violated a school tobacco use policy. In addition, the department will conduct a pilot project in an American Indian community to better reach that population.

Representative Wink asked for the total tobacco program budget. Secretary Hollingsworth said \$5 million. Representative Carson asked for the total amount generated by the \$1 cigarette tax. Secretary Hollingsworth said the Bureau of Finance and Management could provide the total amount; however \$5 million comes to the Department of Health. Senator Brown asked that information be provided to the Committee regarding the cigarette tax fund. Sue Cichos told the Committee in FY08, 09 and 10 the cigarette tax fund amounted to \$62.5 million. FY11 was estimated at \$59 million.

Secretary Hollingsworth said the department will make the following changes as a result of budget reductions:

- Administrative Changes
 - A \$42,000 decrease in travel department wide.
 - A \$30,000 decrease in supplies department wide.
- A \$25,000 reduction in Multi-year licensing of healthcare facilities
- A \$90,000 reduction in Trauma program funding (the department has secured a very stable federal funding source).
- A \$125,393 reduction in overtime and temporary nurse costs by increasing FTE in Corrections Health.

Ms. Adam spoke to the Committee regarding Correctional Health. FY11 base budget was \$14,782,809 and the FY12 request is \$15,688,135, an increase of \$905,326 and 5.0 FTEs. Ms. Adam told the Committee increases in medical inflation are applied by standard inflationary increases. The department negotiates agreements with medical providers to see a discount in the reimbursement rate and this negotiation is generally done on a yearly basis and the department has a team of medical providers that monitor the drug formulary. Ms. Adam said in order to save money; the department has changed the way it handles prescriptions for inmates being released from prison. In the past, upon release from prison, the inmate was sent out with a one-month supply of the necessary prescription and had the ability to obtain refills for 3 months. Currently, the department is making a one month supply available at a local pharmacy with the option for refills for 3 months, at their expense. If the inmate does not take the initiative to pick up the first month's prescription, the state is not charged.

The \$335,619 increase in medical services is based on the Department of Corrections projections for an inmate population increase totaling 127 inmates. Ms. Adam said the FY11 cost per inmate was \$4,168. With regard to the request for 5.0 additional FTEs, Ms. Adam said the department had reviewed staffing levels in the prison system and the trend showed when FTEs were cut, the amount of overtime and contracted nursing services increased. It was determined the department could save money by increasing staff and reducing contracted staff. The decrease of \$125,393 is the net effect of this change. The increase of \$20,748 is for medical provider expansion at the new Rapid City trustee unit. Representative Romkema asked for the average age of the inmates, Ms. Adams said 48 years of age (later corrected to 36). Representative Dennert asked for additional information on inmate medical expenses.

Senator Tidemann asked if the FTEs proposed to be cut were vacant. Secretary Hollingsworth said the FTE in the Latent tuberculosis program was actually a combination of positions. The two FTE in the Board of Medical and Osteopathic Examiners are vacant. The FTE in the HSDR Administration is not vacant at this time.

In summary, the department's major expansions and reductions include:

All Department:

- A decrease of \$72,000 from general funds due to travel and supplies being reduced throughout the department.
- A decrease of \$20,942 from general funds, \$77,004 in federal fund expenditure authority and \$44,804 in other fund expenditure authority due to reductions in the rates paid for services provided by the Bureaus.

Division of Administration:

- A decrease of \$40,672 from general funds and a corresponding increase to other funds due to zero-based personal services. The department is able to use some other funds to match indirect costs instead of general funds.
- A decrease of \$8,265 from general funds and \$8,266 due to personal services decrease.

Division of Health Systems Development & Regulation:

- A decrease of \$25,000 from general funds due to health care facilities being licensed for a 2-year period instead of annually.
- A decrease of \$90,000 from general funds and a corresponding increase in federal funds expenditure authority because the Trauma Program received a federal grant.
- A decrease of \$2,800,000 in federal fund expenditure authority due to the end of the H1N1 grant.
- A decrease of 1.0 FTE and \$20,243 from general funds and \$20,243 in federal fund expenditure authority for the elimination of a clerical position.

Division of Health & Medical Services:

- A decrease of 1.0 FTE and \$117,038 from general funds as latent tuberculosis (TB) infections will no longer be required to report to the department.
- A decrease of \$60,000 from general funds due to a decreasing number of TB and mold specimens the department pays for.
- A decrease of \$349,000 from general funds. Flu vaccines will no longer be provided for children 6 to 18 years of age. Flu vaccine is purchased one year in advance, so the funding cut in FY12 affects vaccinations in FY13.

Correctional Health:

- An increase of \$1,102,811 in other fund expenditure authority for Correctional Health. The increase is due to prescription drug and medical supplies inflation, inmate growth, and the new Rapid City Minimum Unit opening in January 2012.
- An increase of 5.0 FTE for hiring more nurses and reducing the use of contracted nurses, resulting in a decrease of \$125,393 in other fund expenditure authority.
- A decrease of \$61,008 in other fund expenditure authority for a 10% provider rate reduction.

Tobacco Prevention:

- An increase of \$500,000 in other fund expenditure authority. These are funds from the Tobacco Prevention and Reduction Trust Fund.

Informational Boards:

Overall changes to Informational Boards are an increase of \$193,769 in federal fund expenditure authority and a decrease of 2.0 FTE and \$92,000 in other fund expenditure authority.

MOTION: ADJOURN

Moved by: Brown
Second by: Peters
Action: Prevailed by voice vote.

Barb Bjorneberg and Lisa Shafer
Committee Secretary

Dean Wink, Chair